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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AMBER V.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

B276753

(Super. Ct. No. DK06651)

Writ petition to review order setting hearing under Welfare
and Institutions Code section 366.26. Julie Fox Blackshaw,
Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc. (LADL 5), Law
Office of Danielle Butler Vappie and Courtney Fisher for
Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, Tracey F. Dodds, Principal Deputy
County Counsel, for Real Party in Interest Los Angeles County
Department of Children and Family Services.

INTRODUCTION

On September 24, 2014 the juvenile court sustained an
amended petition under Welfare and Institutions Code¹
section 300, subdivision (b),² alleging that Amber waited two
days to take her son D.R. (then seven months old) to the doctor
after he broke his leg, and that, after Amber took D.R. to receive

¹ Undesignated statutory references are to the Welfare and
Institutions Code.

² Section 300, subdivision (b), allows the juvenile court to
adjudge a child a dependent of the court when “[t]he child has
suffered, or there is a substantial risk that the child will suffer,
serious physical harm or illness, as a result of . . . the willful or
negligent failure of the parent . . . to provide the child with
adequate . . . medical treatment.”

medical treatment, she removed the cast on his leg against medical advice and repeatedly refused to have the leg recast. The court had initially removed D.R. from Amber's physical custody on July 28, 2014. At the disposition hearing on April 13, 2015 the court removed D.R. from Amber's custody and ordered reunification services. We affirmed the juvenile court's jurisdiction findings and disposition order over Amber's contention that the disposition order removing D.R. from her custody was not supported by substantial evidence. (See *In re D.R.* (Mar. 8, 2016, B264741) [nonpub. opn.])

In this proceeding, Amber seeks extraordinary relief (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452) from the juvenile court's order at the 18-month permanency review hearing (§ 366.22), conducted more than 24 months after the initial removal, setting a hearing pursuant to section 366.26 to consider termination of parental rights and implementation of a permanent plan for D.R. Amber principally contends that, because the Los Angeles County Department of Children and Family Services did not adequately identify until late in the juvenile court proceedings cognitive deficiencies that hindered Amber's progress despite her active participation in her court-ordered programs, the juvenile court should have extended reunification services beyond the 18-month statutory limit. Amber also challenges the court's order at the same hearing

changing her visitation with D.R. from unmonitored to monitored visits.³ We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Disposition Hearing

In making its disposition findings and orders the juvenile court considered, among other things, the court-ordered report of a psychiatrist who had evaluated Amber under Evidence Code section 730. The psychiatrist explained that Amber “suffered symptoms in the past which are consistent with a diagnosis of major depressive disorder of moderate severity,” but found no evidence Amber was “deluded [or] psychotic” The psychiatrist concluded that with continued guidance Amber had the potential to be an adequate parent for D.R. At the time of the disposition hearing Amber was doing well in weekly dyadic therapy, was enrolled in individual counseling, and had participated in a 12-week parenting program. Amber, however, had ceased taking her prescribed anti-depressant medication. The court found that Amber had put D.R.’s physical health and

³ Although the visitation order was not an order “that a hearing pursuant to this section be held” (§ 366.26, subd. (l)), it is subject to writ review under section 366.26, subdivision (l), and California Rules of Court, rule 8.452. (See *In re T.G.* (2015) 242 Cal.App.4th 976, 985; *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 816-817.)

well-being in danger by her continuing pattern of ignoring safety and medical advice, a finding we affirmed. The court also ordered monitored visitation for Amber with D.R., with the Department having discretion to liberalize visitation to unmonitored visits.

B. *The Six-month Review Hearing*

For the six-month review hearing (§ 366.21, subd. (e)) the Department reported that Amber was participating in multiple programs and in dyadic therapy, making progress toward her treatment goals, and having consistent and appropriate monitored visits with D.R. Amber, however, was resisting taking her prescribed psychotropic medication as recommended by a psychiatric evaluation. Although the social worker gave Amber referrals to mental health facilities for assessments of her continued need for medication, Amber denied at each intake interview that she had any mental health issues, and she resisted participating in any follow-up assessment to determine her need for medication. Amber also insisted that she was able to manage her life without medication, stating that she had a home, paid her bills on time, and was participating in her court-ordered programs. The Department recommended that the court terminate reunification services, primarily because of Amber's

refusal to cooperate in undergoing a thorough psychiatric assessment of her need for medication, which she refused to take.

On October 9, 2015 the juvenile court set the six-month review hearing for a contest and ordered an Evidence Code section 730 evaluation to determine whether Amber needed to take psychotropic medication. On December 29, 2015 the Department submitted a report attaching the Evidence Code section 730 report prepared by Dr. Eric Chaghouri and Dr. Leanne Stoneking. The evaluators diagnosed Amber with Major Depressive Disorder, a chronic condition, but stated that she did not currently require medication because the condition was in remission. The evaluators also observed that Amber did not display significant cognitive deficits. The Department further reported it had not liberalized Amber's visits with D.R. because there had been several incidents during recent visits indicating Amber was unable to identify D.R.'s needs without a monitor present.

In a further report submitted on January 11, 2016 the Department stated Amber was engaged during her counseling and dyadic therapy sessions, but had missed three consecutive counseling sessions in October 2015, and one dyadic session had been cancelled because Amber arrived late. Amber's therapist had reported that, although Amber was receptive to the

therapist's suggestions, she needed regular prompts and reminders on strategies to help D.R. eat properly.

At the contested six-month review hearing on January 11, 2016 the juvenile court found that Amber was in partial compliance with her case plan and that the Department had provided reasonable reunification services. The court then set the 18-month permanency review hearing (§ 366.22) for March 3, 2016.⁴ The court granted Amber unmonitored three-hour daytime visits with D.R., with the Department having discretion to liberalize the visits, and ordered the Department to refer Amber and D.R. to parent-child interactive therapy (PCIT).

C. *The 18-month Permanency Review Hearing*

On February 24, 2016 the Department reported that Amber initially stated she did not want to participate in PCIT, but she later relented and agreed to enroll. The Department also reported that during Amber's recent unmonitored visits in the foster mother's home, D.R. displayed aggressive behavior, demonstrated social-emotional distress, and had regressed in his toilet training. The Department recommended that the court terminate reunification services. On February 24, 2016 the

⁴ The court set the hearing as the 18-month permanency review because D.R. had been removed from Amber's physical custody on July 28, 2014.

juvenile court continued the 18-month hearing to May 12, 2016 for a full and complete report by the Department.

On April 21, 2016 the Department submitted its report, indicating Amber and D.R. continued to participate in dyadic therapy. The therapist, Dr. Jenna Ouye, reported that D.R. was having issues with overeating and toilet training, and Amber was having difficulty implementing the strategies Dr. Ouye suggested Amber use while caring for D.R., and often became upset, angry or overwhelmed. Amber also had problems communicating with the foster mother and remembering plans for D.R.'s care. Dr. Ouye also reported that Amber's visits appeared to trigger aggressive behavior and social-emotional distress in D.R. Dr. Ouye expressed concern, based on Amber's erratic behavior, that Amber may have cognitive barriers, and recommended that Amber participate in a cognitive assessment. The social worker promptly relayed Dr. Ouye's concern to Amber's individual therapist, who scheduled an assessment to determine Amber's level of cognitive functioning.

On May 12, 2016 the juvenile court learned that a cognitive assessment had been scheduled for Amber. The court ordered the Department to prepare a supplemental report that included the results of the assessment, and set the 18-month permanency review hearing for a contest on August 1, 2016.

The Department's report for the continued hearing included the results of the cognitive assessment, which took place over four days in April, May, and June 2016. The examiners explained that Amber's patterns of behavior included a need for validation and approval, flat affect, lack of motivation, and slow processing. Amber was diagnosed with a mild intellectual disability, language disorder, and social communication disorder. Amber's Full Scale IQ was 72, and her ability to process information and perform cognitive tasks was in the extremely low range, as were her mental processing speed, visual discrimination, short-term memory, and psychomotor speed. Amber fell into the "profound deficit range" for communication and socializing, limiting her ability to understand indirect cues, identify potential dangers, and control anger. The examiners concluded Amber would require ongoing support with childcare and other daily living tasks.

The Department again recommended that the court terminate reunification services for Amber and set the matter for a selection and implementation hearing pursuant to section 366.26, noting that Amber had received over 24 months of services, which exceeded the statutory time limit, had made limited progress in overcoming the problems that led to D.R.'s dependency status, and remained unreceptive to the suggestions of her service providers. The Department also recommended

Amber's visitation with D.R. revert to monitored visits, in view of the concerns identified by the cognitive assessment examiners, D.R.'s aggressive behavior during visits, and his regression in toilet training.

On August 1, 2016 the juvenile court held the 18-month permanency review hearing. The court also considered a petition filed by the Department pursuant to section 388 seeking an order reverting Amber's visitation with D.R. to monitored visits. In its section 388 petition the Department observed, among other things, that despite Dr. Ouye's instruction to Amber that she feed D.R. healthy foods, Amber continued to bring unhealthy meals and snacks to the dyadic therapy sessions. The Department also noted D.R.'s foster mother had reported that D.R. continued to return from his visits with Amber with sodas and other foods lacking in nutrition.

After the court admitted into evidence the Department's reports and a letter from Dr. Ouye to the social worker,⁵ counsel for Amber asked that the court either return D.R. to her care or extend reunification services for an additional six months on the ground the Department had failed to provide reasonable

⁵ In the letter Dr. Ouye reported that, because Amber had still not mastered limit-setting and reading D.R.'s cues, and expressed feeling "scrutinized" in the clinic setting, there had been slow progress in therapy and it was not appropriate to transition the dyadic therapy sessions from the clinic to Amber's residence.

reunification services. Specifically, counsel for Amber argued that the Department was derelict in failing to identify Amber's cognitive limitations until late in the reunification period. Counsel acknowledged that Amber had made insufficient progress in her programs, but contended that her failure to make adequate progress was the result of the Department's failure to provide proper services.

Counsel for D.R. asked the court to terminate reunification services and set a section 366.26 hearing. Counsel for D.R. maintained that the Department had complied with all of the juvenile court's orders for programs and treatment, had been diligent in providing services to Amber throughout the entire reunification period, and was not responsible for the late identification by the therapists of Amber's cognitive deficits. Counsel also argued that D.R.'s need for permanence and stability outweighed any claims by Amber to additional reunification services.

Counsel for the Department joined in D.R.'s request that the court terminate reunification services, emphasizing that the social worker had worked diligently to provide Amber with referrals to therapy and counseling throughout the reunification period. Counsel for the Department pointed out that, when Dr. Ouye recommended Amber undergo a cognitive assessment,

the social worker immediately brought the matter to the court's attention and promptly arranged for the assessment.

The court terminated reunification services for Amber and set the matter for a hearing under section 366.26. The court found that it was not safe to return D.R. to Amber's care, the Department had provided Amber with reasonable reunification services, and there were no exceptional circumstances warranting extension of reunification beyond the statutory limit. The court granted the Department's section 388 petition and returned Amber's visitation to monitored visits, determining that continued unmonitored visitation would be detrimental to D.R. in view of the behavioral problems exhibited by D.R. during visits and Amber's failure to attend to D.R.'s needs.

DISCUSSION

A. The Juvenile Court Properly Terminated Reunification Services

Amber argues that the juvenile court abused its discretion by refusing to continue reunification services because of exceptional circumstances. Amber contends that, "[g]iven her history of actively engaging in all programs suggested to facilitate reunification," the juvenile court "should have used its discretion to extend [her] reunification services past the

section 366.22 hearing.”

Section 366.22, subdivision (b), authorizes the juvenile court to extend services beyond the 18-month statutory limit in certain limited circumstances. The court, however, may not extend services under section 366.22, subdivision (b), beyond 24 months after the date the child was originally removed from the parent’s physical custody. (See § 366.22, subd. (b) [“the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian”]; *San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 222 [“[t]he juvenile court may extend reunification services beyond 18 months from the date of initial removal, to ‘a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent’”]; see also *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1008-1009 [“[i]f, after the specified time period has expired, the efforts to reunify the family have failed, ‘the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan’”].) Here, the 18-month permanency review hearing occurred more than 24 months after the date of D.R.’s original removal from Amber’s

physical custody. Therefore, Amber is not entitled to invoke any of the statutory exceptions to the termination of reunification services.

There are cases holding that the juvenile court has discretion to continue the 18-month permanency review hearing under section 352 and extend reunification services beyond the 18-month statutory limit. Those cases, however, involve exceptional circumstances not present here, such as an external factor that thwarted the parent's efforts at reunification. (See *In re J.E.* (2016) 3 Cal.App.5th 557, 564 ["juvenile court may extend services beyond the 18-month statutory period if it finds 'extraordinary circumstances "involv[ing] some external factor which prevented the parent from participating in the case plan'""]; see, e.g., *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1012, 1015 [child welfare agency failed to contact the father "during 13 months of the 17-month reunification period" and "failed to make any effort to reunify the incarcerated father and his daughter"]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 [mother was hospitalized during most of the reunification period, and after she was released the child welfare agency attempted to restrict visitation]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1209, 1212-1214 [reunification services provided by the child welfare agency were a "disgrace"]; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777-1778 [child welfare

agency never developed a reunification plan for the father].) And none of those cases approved extending reunification services beyond 24 months. (See, e.g., *In re J.E.*, *supra*, Cal.App.5th at p. 564 [juvenile court has “discretion under section 352 to continue the 18-month review hearing and extend reunification services up to 24 months upon a showing of good cause”].)

B. *Substantial Evidence Supports the Juvenile Court’s Finding That the Department Provided Reasonable Services*

Amber also argues that substantial evidence does not support the juvenile court’s finding that the Department provided her with reasonable reunification services because “the Department failed to adequately identify [Amber’s] cognitive deficiencies that hindered her progress despite her active engagement in services.” According to Amber, “the juvenile court should have made a no reasonable services finding and utilized its discretion to extend reunification services”

Substantial evidence supports the juvenile court’s reasonable services finding. “A social services agency is required to make a good faith effort to address the parent’s problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult.”

(*In re Lana S.* (2012) 207 Cal.App.4th 94, 108; see *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 590.) The Department did all of these. The Department provided Amber with all of the court-ordered services during the entire reunification period, continuously monitored Amber's progress in her programs, communicated regularly with Amber's counselors and therapists, and prepared detailed reports for each of the review hearings. When Amber continued to have problems despite her individual counseling, dyadic therapy, PCIT therapy, and multiple psychological evaluations, Dr. Ouye suggested that a cognitive assessment of Amber was appropriate. The social worker expeditiously arranged for the assessment. The Department may not have been able to immediately identify all of Amber's various psychological and developmental issues with flawless diagnostic precision, but it made all reasonable efforts to provide Amber with appropriate services and provided her with assistance throughout the reunification process. (See *In re J.E.*, *supra*, Cal.App.5th at p. 566 ["[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances"].)⁶

⁶ In a reply to the Department's response to the petition, Amber notes that on January 22, 2015 the juvenile court ordered the Department to conduct psychological testing, including an examination of Amber's cognitive function, for the disposition

There is substantial evidence that the Department provided Amber with reasonable reunification services. The juvenile court acted well within its discretion in determining that D.R.'s need for permanence and stability outweighed any claim by Amber to additional reunification services. (See *In re James F.* (2008) 42 Cal.4th 901, 915 ["the ultimate consideration in a dependency proceeding is the welfare of the child"]; *Sara M. v. Superior Court*, *supra*, 36 Cal.4th at pp. 1015-1016 ["[t]he parent is given a reasonable period of time to reunify and, if unsuccessful, the child's interest in permanency and stability

hearing, but that when the court conducted the disposition hearing on April 13, 2015 the evaluation had not been submitted. Amber argues that this shows that the Department knew early in the juvenile court proceedings she might suffer from cognitive deficits. Any challenge by Amber to the absence of an evaluation of her cognitive function at the time of disposition should have been made, if at all, in her appeal from the disposition order. Although Amber made a vague reference in her opening brief in that appeal to a missing report, she did not pursue the issue of a cognitive assessment. The disposition order has long become final, and Amber cannot now revive the issue on a petition challenging the juvenile court's order setting a hearing under section 366.26. (See *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1139 ["in the context of dependency cases, courts have held that orders that have become final may not be reviewed in a later appeal from another appealable order"].) To the extent Amber contends the information in a psychological report that was not previously available entitles her to additional reunification services, her proper remedy is a petition for modification under section 388 in the juvenile court.

takes priority”]; *D.T. v. Superior Court* (2015) 241 Cal.App.4th 1017, 1034 [juvenile dependency laws “shift[] the emphasis of the proceedings over time from the goal of preserving the family at the outset to that of protecting and promoting the best interests of the child if efforts at reunification produce unsatisfactory results or drag on too long”]; *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1510 [emphasis in the dependency law “is on ‘setting outside limits to the length of time a child may be kept in foster care before a permanent plan is established’”].)

C. *The Juvenile Court Did Not Abuse Its Discretion in Ordering Monitored Visitation*

“We review an order setting visitation terms for abuse of discretion.” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) “When applying the deferential abuse of discretion standard, “the trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.”” (*In re Maya L.* (2014) 232 Cal.App.4th 81, 102.) ““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1117.)

The evidence at the 18-month permanency review hearing established that, from the time unmonitored visits commenced, D.R. began to exhibit behavioral problems. He became aggressive, displayed social-emotional distress, had issues with overeating, and had repeated toileting incidents. Amber also had difficulty remembering the strategies Dr. Ouye gave her for taking care of D.R., and following Dr. Ouye's instructions on the kinds of food she should be providing to D.R. In addition, Amber became angry and overwhelmed during visits, and did not properly communicate with the foster mother during visits. There was substantial evidence to support the juvenile court's factual findings that continued unmonitored visits would be detrimental to D.R.'s well-being, and the court did not abuse its discretion changing Amber's visits with D.R. from unmonitored to monitored.

DISPOSITION

The petition is denied.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.